

**APPENDIX C**  
**REGULATORY SETTING**



## **Acronyms and Abbreviations**

AB	Assembly Bill
ARB	Air Resources Board
BECA	Beach Erosion Concern Area
BMP	best management practice
CAA	Clean Air Act
CAAA	Clean Air Act Amendments of 1990
CAAQS	California Ambient Air Quality Standards
CAL FIRE	California Department of Forestry and Fire Protection
CalEPA	California Environmental Protection Agency
CalRecycle	California Department of Resources Recycling and Recovery
CAP	Climate Action Plan
CBC	California Building Code
CCAA	California Clean Air Act
CCC	California Coastal Commission
CCR	California Code of Regulations
CDFW	California Department of Fish and Wildlife
CEQ	Council for Environmental Quality
CEQA	California Environmental Quality Act
CESA	California Endangered Species Act
CFR	Code of Federal Regulations
CHHSL	California Human Health Screening Level
CIWMB	California Integrated Waste Management Board
CLSC	California State Lands Commission
CNRA	California Natural Resources Agency
CO	carbon monoxide
Conservancy	California State Coastal Conservancy
Corps	U.S. Army Corps of Engineers
County DPR	County of San Diego Department of Parks and Recreation
County	County of San Diego
CPUC	California Public Utilities Commission
CSCC	California State Coastal Conservancy
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
diesel PM	diesel particulate matter
DMG	Division of Mines and Geology
DOT	U.S. Department of Transportation
EFH	Essential Fish Habitat

EO	Executive Order
EPA	U.S. Environmental Protection Agency
ESA	Endangered Species Act
FEMA	Federal Emergency Management Agency
GHG	greenhouse gas
HCP	habitat conservation plan
HMP	Hydromodification Management Plan
JURMP	Jurisdictional Urban Runoff Management Plan
LCP	Local Coastal Program
LHP	Landslide Hazard Program
LID	Low Impact Development
LIP	Local Implementation Plan
LUP	Land Use Plan
MBTA	Migratory Bird Treaty Act
MLPA	Marine Life Protection Act
MMPA	Marine Mammal Protection Act
MPRSA	Marine Protection, Research, and Sanctuaries Act
MSCP	Multiple Species Conservation Program
MT	metric ton(s)
NAAQS	National Ambient Air Quality Standards
NAHC	Native American Heritage Commission
NC Plan	North County Multiple Species Conservation Plan
NCMSP	North County Multiple Species Conservation Program
NEPA	National Environmental Policy Act
NFIP	National Flood Insurance Program
NHPA	National Historic Preservation Act
NHS	National Highway System
NOAA	National Oceanic and Atmospheric Administration
NOI	Notice of Intent
NPDES	National Pollutant Discharge Elimination System
NPPA	Native Plant Protection Act
NRHP	National Register of Historic Places
PDP	Priority Development Project
PM <sub>2.5</sub>	particulate matter 2.5 micrometers or less
PRC	Public Resources Code
RPS	Renewables Portfolio Standard
RSM Plan	Regional Sediment Management Plan
RWQCB	Regional Water Quality Control Board
SANDAG	San Diego Association of Governments

SDAB	San Diego Air Basin
SDAPCD	San Diego Air Pollution Control District
SDCVCP	San Diego County Vector Control Program
SELRP	San Elijo Lagoon Restoration Project
SHMA	Seismic Hazards Mapping Act
SIP	State Implementation Plan
SMCA	State Marine Conservation Area
SPS	Shoreline Preservation Strategy
SRA	State Responsibility Area
SUSMP	Standard Urban Runoff Mitigation Plan
SWPPP	Storm Water Pollution Prevention Plan
SWRCB	State Water Resources Control Board
TAC	toxic air contaminant
TMDL	total maximum daily load
UBC	Uniform Building Code
USC	U.S. Code
USFWS	U.S. Fish and Wildlife Service
USGS	U.S. Geological Survey

## APPENDIX C REGULATORY SETTING

The regulations described in this section are applicable to the proposed project. The following table lists all regulations presented and the topic area to which they are generally applicable.

Regulation	Applicable Resource Sections
<b>Federal Regulations</b>	
Civil Rights Act of 1964	Socioeconomics/ Environmental Justice
Coastal Zone Management Act	Land Use/Recreation, Coastal Processes, Water Quality, Hydrology
Marine Protection, Research, and Sanctuaries Act	Land Use/Recreation, Coastal Processes, Water Quality, Hydrology
Clean Air Act	Air Quality, Geology and Soils
Clean Air Act General Conformity	Air Quality
Clean Air Act Toxic Air Contaminants	Air Quality
Clean Air Act Section 202(a)	Global Climate Change and Greenhouse Gas Emissions
Clean Water Act	Water Quality, Geology/Soils, Biological Resources
Clean Water Act Section 303(d) Total Maximum Daily Loads	Water Quality, Geology/Soils
Clean Water Act Section 401 Water Quality Certification	Water Quality, Geology/Soils
Clean Water Act Section 402 National Pollutant Discharge Elimination Program	Water Quality
Clean Water Act Section 404 Discharge of Dredge or Fill Material	Water Quality, Biological Resources
Council on Environmental Quality Guidance	Global Climate Change and Greenhouse Gas Emissions
Earthquake Hazards Reduction Act	Geology and Soils
Endangered Species Act	Biological Resources
Executive Order 11990 – Protection of Wetlands	Water Quality, Biological Resources
Executive Order 11988 – Floodplain Management Conditional Letter of Map Revision and Letter of Map Revision	Water Quality, Hydrology, Biological Resources, Hazards and Public Safety
Executive Order 12088	Air Quality, Water Quality, Hazards and Public Safety
Executive Order 12898 – Environmental Justice	Socioeconomics/ Environmental Justice
Executive Order 13045 – Protection of Children from Environmental Health Risks and Safety Risks	Socioeconomics/ Environmental Justice
Executive Order 13112, Invasive Species	Biological Resources
Magnuson-Stevens Fishery Management and Conservation Act, as amended 1996 (Public Law 104-267)	Biological Resources
Mandatory Greenhouse Gas Reporting Rule	Global Climate Change and Greenhouse Gas Emissions

<b>Regulation</b>	<b>Applicable Resource Sections</b>
Migratory Bird Treaty Act	Biological Resources
National Flood Insurance Act	Water Quality, Hazards and Public Safety
National Environmental Policy Act	All resource areas
National Highway System Designation Act	Visual Resources
National Highway Transportation Safety Administration Fuel Economy Standards for Medium- and Heavy-Duty Engines	Global Climate Change and Greenhouse Gas Emissions
National Historic Preservation Act	Cultural Resources
Norman Y. Mineta and Special Programs Improvement Act	Public Service and Utilities, Hazards and Public Safety
Rivers and Harbors Act, Section 10	Water Quality
U.S. Geological Survey Landslide Hazard Program	Geology and Soils
<b>State Regulations</b>	
Assembly Bill 32: California Global Warming Solutions Act of 2006	Global Climate Change and Greenhouse Gas Emissions
Assembly Bill 32: Climate Change Scoping Plan	Global Climate Change and Greenhouse Gas Emissions
Assembly Bill 411: Beach Sanitation: Posting	Water Quality
Assembly Bill 939: Integrated Waste Management Act	Public Services and Utilities
Assembly Bill 1493	Global Climate Change and Greenhouse Gas Emissions
Alquist-Priolo Earthquake Fault Zoning Act	Geology and Soils
Building Codes	Geology and Soils
Administrative Code; Title 14, Section 4307	Cultural Resources, Paleontological Resources
California Clean Air Act	Air Quality
California Coastal Act	Land Use/Recreation, Coastal Processes, Water Quality
California Code of Regulations; Title 14 Division 1.5	Hazards and Public Safety
California Code of Regulations: Title 14 Section 630(b)(103)	Land Use and Recreation
California Code of Regulations Title 17	Global Climate Change and Greenhouse Gas Emissions
California Department of Fish and Game Code	Water Quality, Hydrology, Biological Resources
California Endangered Species Act	Biological Resources
California Environmental Quality Act	All resource areas
California Environmental Quality Act Title 14 California Code of Regulations Section 15131	Socioeconomics/ Environmental Justice
California Fish and Game Code Section 1602 Streambed Alteration	Water Quality, Hydrology, Biological Resources
California Fish and Game Code Section 3503 and 3503.5 Protection of Birds, Nests, and Raptors	Biological Resources
California Fish and Game Code Fully Protected Species	Biological Resources
California Government Code, Section 4216: Protection of Underground Infrastructure	Public Services and Utilities
California Government Code Sections 6253, 6254, 6254.10	Cultural Resources
California Government Code Section 65860	Cultural Resources
California Health and Safety Code Sections 7050.5, 7051, and 7052	Cultural Resources
California Human Health Screening Levels	Hazards and Public Safety
California Native Plant Protection Act	Biological Resources
California Penal Code, Title 14, Sections 622.5, 623	Cultural Resources
California Public Resources Code Section 5097.5	Cultural Resources

<b>Regulation</b>	<b>Applicable Resource Sections</b>
California Public Resources Code Sections 5097.9 to 5097.991	Cultural Resources
California Resolution Number 43	Cultural Resources
California Scenic Highway Law	Visual Resources
The California State Coastal Conservancy 2013-2018 Strategic Plan	Global Climate Change and Greenhouse Gas Emissions
California State Lands Commission Public Trust Doctrine	Land Use/Recreation
California Street and Highways Code	Visual Resources
Construction General Permit	Water Quality, Hydrology, Geology/Soils
Executive Order S-1-07	Global Climate Change and Greenhouse Gas Emissions
Executive Order S-3-05	Global Climate Change and Greenhouse Gas Emissions
Executive Order S-13-08	Global Climate Change and Greenhouse Gas Emissions
Marine Life Protection Act	Land Use/Recreation, Biological Resources
Natural Community Conservation Plans and Habitat Conservation Plans	Biological Resources
Porter-Cologne Water Quality Control Act	Water Quality, Biological Resources
Public Utilities Code (California Public Utilities Commission General Order 131-D)	Public Services and Utilities
San Diego Coastal State Park General Plan	Land Use/Recreation, Biological Resources, Cultural Resources
Seismic Hazards Mapping Act of 1990	Geology/Soils
Senate Bill 97	Global Climate Change and Greenhouse Gas Emissions
Senate Bill 922	Cultural Resources
Senate Bill 1374: Local Government Construction and Demolition Guide	Public Services and Utilities
Senate Concurrent, Resolution Number 87	Cultural Resources
Senate Bill X1-2	Global Climate Change and Greenhouse Gas Emissions
State Implementation Plan	Air Quality
Surface Mining and Reclamation Act	Land Use
<b>Local Regulations</b>	
Air Resources Board 2008 Scoping Plan	Air Quality, Global Climate Change and Greenhouse Gas Emissions
City of Encinitas Climate Action Plan	Air Quality, Global Climate Change and Greenhouse Gas Emissions
City of Encinitas General Plan and Local Coastal Program, Land Use Plan	Land Use and Recreation
City of Encinitas General Plan Resource Management Element	Cultural Resources, Paleontological Resources, Visual Resources
City of Encinitas General Plan Resource Management Element	Land Use and Recreation
City of San Diego General Plan and Local Coastal Program	Land Use and Recreation
City of Solana Beach General Plan and Local Coastal Program, Land Use Plan, Local Implementation Plan	Land use and Recreation
City of Solana Beach General Plan Circulation Element	Visual Resources, Traffic and Circulation



<b>Regulation</b>	<b>Applicable Resource Sections</b>
City of Solana Beach General Plan Conservation and Open Space Element	Paleontological Resources, Visual Resources
City of Solana Beach General Plan Conservation and Open Space Element	Land Use and Recreation
Coastal Regional Sediment Management Plan	Water Quality
Construction Dewatering Permits	Water Quality
Noise Ordinances	Noise
San Diego County Code Chapter 6. Resource Protection Ordinance	Biological Resources, Cultural Resources
County of San Diego General Plan and San Dieguito Community Plan	Land Use and Recreation
County of San Diego Guidelines for Determining Significance for Climate Change	Global Climate Change and Greenhouse Gas Emissions
San Diego County Vector Control Program	Hazards and Public Safety
Escondido Creek Watershed Restoration Action Plan	Land Use and Recreation, Water Quality, Hydrology
San Diego Municipal Storm Water Permit	Water Quality, Hydrology
San Diego Association of Governments Board Policy No. 25: Public Participation/ Involvement Policy	Socioeconomics and Environmental Justice
San Diego Regional Water Quality Control Board Basin Plan	Water Quality
San Elijo Lagoon Action Plan	Land Use and Recreation
San Elijo Lagoon Area Enhancement Plan	Land Use and Recreation, Biological Resources
San Elijo Lagoon Ecological Reserve Vegetation Management Plan	Hazards and Public Safety
Shoreline Preservation Strategy	Land Use and Recreation

### Air Resources Board 2008 Scoping Plan

The Air Resources Board's (ARB) Scoping Plan states that local governments are “essential partners” in the effort to reduce greenhouse gas (GHG) emissions. The Scoping Plan also acknowledges that local governments have “broad influence” and, in some cases, exclusive jurisdiction over activities that contribute to significant direct and indirect GHG emissions through their planning and permitting processes, local ordinances, outreach and education efforts, and municipal operations. Many of the proposed measures to reduce GHG emissions rely on local government actions. The Scoping Plan encourages local governments to reduce GHG emissions by approximately 15% from current levels by 2020.

### Assembly Bill 32: California Global Warming Solutions Act of 2006

Assembly Bill (AB) 32 was signed in September 2006, requiring ARB to adopt a statewide limit on GHG emissions equivalent to 1990 levels to be achieved by 2020; requiring ARB to adopt rules and regulations, and authorizing ARB to adopt market-based mechanisms, to achieve the

GHG emissions limit; and requiring reporting and monitoring of GHG emissions from major-emitting sources.

AB 32 identifies specific dates by which ARB must prepare and approve a Scoping Plan that identifies measures for achieving GHG reductions by 2020. Further, AB 32 states that the GHG emissions limit shall remain in effect beyond 2020 and that ARB shall provide guidance to achieving GHG emissions reductions beyond 2020. AB 32 also recognizes the Governor's Climate Action Team's role in continuing to coordinate overall climate policy. AB 32 also includes guidance to institute emissions reductions in an economically efficient manner and conditions to ensure that businesses and consumers are not unfairly affected by the reductions.

### Climate Change Scoping Plan

In December 2008, ARB adopted its Climate Change Scoping Plan (Scoping Plan) with updates in 2010 and is currently undergoing updates at this time. The Scoping Plan contains a comprehensive set of strategies designed to achieve the 2020 GHG emissions limit. The measures in the Scoping Plan also put California on a path to meet the long-term 2050 goal of reducing California's GHG emissions to 80% below 1990 levels. Implementing light-duty vehicle GHG emission standards, LCFS, regional transportation-related GHG targets, and the RPS as set forth in the Scoping Plan would continue to achieve reductions through at least 2030. However, the Scoping Plan does not recommend additional measures for meeting specific GHG emissions limits beyond 2020. The Scoping Plan is currently being updated, and additional information on revised measures is not available at the time this analysis was developed. ARB's Scoping Plan includes measures that would indirectly address GHG emissions levels associated with construction activities, including the phasing in of cleaner technology for diesel engine fleets (including construction equipment) and the development of an LCFS. The Scoping Plan calls for over half of the reductions in GHG emissions to be achieved by implementing the following measures and standards:

- improved emissions standards for light-duty vehicles;
- the Low-Carbon Fuel Standard;
- energy efficiency measures in buildings and appliances, and the widespread development of combined heat and power systems; and
- a renewable portfolio standard for electricity production.

The Scoping Plan is currently being updated, and additional information on revised measures is not available at the time of publication.

AB 32 states that the 1990 emissions limit would remain in effect “unless otherwise amended or repealed.” However, unlike the specific requirements and timelines for achieving GHG emissions reductions by 2020, AB 32 did not provide specific timelines for ARB to develop recommended GHG reductions beyond 2020. In addition, the Scoping Plan reiterates California’s role in the long-term goal established in Executive Order (EO) S-3-05, which is to reduce GHG emissions 80% below 1990 levels by 2050. The Scoping Plan states that this will be achieved through development of new technologies not based on fossil fuels and a “shift into a landscape of new ideas, clean energy, and green technology.” The plan also states that, to be on the trajectory toward the 2050 goal to 2030, the State of California would need reduce emissions an average of 4% per year between 2020 and 2030; however, it did not establish specific emissions limits beyond those defined in AB 32. The Scoping Plan included a discussion of how the framework presented for meeting the 2020 goal is “expandable” to allow for additional reductions, including further reducing the emissions limit in the cap-and-trade system, further expanding the renewable portfolio standard, and further reducing the carbon intensity of transportation fuels. Finally, the Scoping Plan states that measures needed to achieve the 2050 goal are “too far in the future to define in detail” and does not present an example framework for achieving this goal.

#### Assembly Bill 411: Beach Sanitation: Posting

AB 411 requires the State Department of Health Services to adopt regulations requiring the following:

- Test waters adjacent to all public beaches for microbiological contaminants, including but not limited to, total coliform, fecal coliform, and *Enterococci* bacteria;
- Establish protective minimum standards for the microbiological indicators that the department determines are appropriate for testing;
- Establish protocols for the following:
  - Determining monitoring site locations and monitoring frequency based on risks to public health.
  - Making decisions regarding public notification of health hazards, including, but not limited to the posting, closing, and reopening of public beaches.
- Perform testing weekly between April 1 and October 31 of each year if the beach is visited by 50,000 or more people annually and the storm drain is adjacent with summer flows.

- Monitoring frequency and locations may be reduced if the established minimum standards are not exceeded for 2 consecutive years.

#### Assembly Bill 939: Integrated Waste Management Act

AB 939 mandates a reduction of waste being disposed and establishes an integrated framework for program implementation, solid waste planning, and solid waste facility and landfill compliance. The California Integrated Waste Management Board (CIWMB) oversees a disposal reporting system, and facility and program planning. On January 1, 2010, all CIWMB duties and responsibilities, along with the Division of Recycling of the Department of Conservation, transferred to the new California Department of Resources Recycling and Recovery (CalRecycle, formerly CIWMB), which is within the Natural Resources Agency.

#### Assembly Bill 1493

AB 1493, signed in 2002, required that ARB develop and adopt by January 1, 2005, regulations that achieve reduction of GHG emissions from passenger vehicles and light-duty trucks, to begin with vehicles of model year 2009 and later. In 2004, ARB adopted standards requiring automobile manufacturers to meet fleet-average GHG emissions limits for all passenger vehicles with model years 2009–2016; emissions for the 2016 model year are approximately 37% lower than the 2009 model year limits. This is also known as Pavley I.

In April 2010, the U.S. Department of Transportation (DOT) and U.S. Environmental Protection Agency (EPA) established GHG emission and fuel economy standards for model year 2012–2016 light-duty cars and trucks. In the fall of 2010, California accepted compliance with these federal GHG standards as meeting similar state standards as adopted in 2004, resulting in the first coordinated national program, and is currently working with DOT and EPA on the new fuel economy and GHG standards for model year 2017–2025 cars and light-duty trucks. This standard is also known as Pavley II.

#### Alquist-Priolo Earthquake Fault Zoning Act

The purpose of the Alquist-Priolo Earthquake Fault Zoning Act of 1972 (renamed in 1994) is “to regulate development near active faults so as to mitigate the hazard of surface fault rupture.” The State Geologist (Chief of the California Division of Mines and Geology [DMG]) is required to delineate Earthquake Fault Zones (formerly known as “Special Studies Zones”) along known active faults. As defined by DMG, an active fault is one that has had surface displacement within Holocene time (roughly the last 11,000 years) and/or has an instrumental record of seismic activity. Potentially active faults are those that show evidence of surface displacement during

Quaternary time (roughly the last 2 million years), but for which evidence of Holocene movement has not been established. DMG evaluates faults on an individual basis to determine if a fault will be classified as an Alquist-Priolo Earthquake Fault Zone. In general, faults must meet certain DMG criteria, including seismic activity, historic rupture, and geologic evidence to be zoned as an Earthquake Fault Zone. Cities and counties affected by the zones must regulate certain development within the zones.

#### California Administrative Code; Title 14, Section 4307

Title 14 Section 4307 requires that no person shall remove, injure, deface, or destroy any object of paleontological, archaeological, or historical interest or value.

#### Building Codes

Chapter 16A, Division IV of the California Building Code (CBC), titled “Earthquake Design,” states that “The purpose of the earthquake provisions herein is primarily to safeguard against major structural failures or loss of life.” The CBC and the Uniform Building Code (UBC) regulate the design and construction of excavations, foundations, building frames, retaining walls, and other building elements to mitigate the effects of seismic shaking and adverse soil conditions. The procedures and limitations for the design of structures are based on site characteristics, occupancy type, configuration, structural system height, and seismic zoning. Seismic zones range from 0 to 4, with areas mapped as Zone 4 being potentially subject to the highest accelerations due to seismic shaking and the shortest recurrence intervals. According to the UBC and CBC, the entire San Diego region is within seismic Zone 4. The CBC also contains (1) specific provisions to classify soils as expansive, (2) exploratory boring procedures, (3) soil boring reporting procedures, and (4) special building foundation and investigation requirements.

#### California Clean Air Act

ARB is the agency responsible for coordination and oversight of state and local air pollution control programs in California and for implementing the California Clean Air Act (CCAA). The CCAA was adopted in 1988 and required ARB to establish the California Ambient Air Quality Standards (CAAQS). ARB has established CAAQS for sulfates, hydrogen sulfide, vinyl chloride, visibility-reducing particulate matter, and criteria air pollutants. In most cases, the CAAQS are more stringent than the National Ambient Air Quality Standards (NAAQS) and incorporate a margin of safety to protect sensitive individuals.

ARB and local air pollution control districts are currently developing plans for meeting new national air quality standards for ozone and particulate matter 2.5 micrometers or less (PM<sub>2.5</sub>).

California's adopted 2007 State Strategy was submitted to EPA as a revision to the State Implementation Plan (SIP) in November 2007 (ARB 2008).

### California Coastal Act

The California Coastal Commission (CCC) was established in 1972 by voter initiative via Proposition 20. The California Coastal Act of 1976 tasked the agency with protection of coastal resources. The state authority controls construction along the state's 1,100 miles of shoreline through the issuance of coastal development permits. The CCC assists local governments in implementing local coastal planning and regulatory powers. Under the California Coastal Act, local governments are encouraged to adopt Local Coastal Programs (LCPs). The LCP consists of a Land Use Plan (LUP) with goals and regulatory policies as well as a set of Implementing Ordinances. The cities of Encinitas, Solana Beach, and San Diego have approved LCPs that address potential materials placement sites. Relevant policies specific to each LCP are discussed below under each jurisdiction. San Elijo Lagoon is located within retained jurisdiction and is not addressed by a local LCP.

Several sections of the California Coastal Act focus on shoreline construction, specifically Sections 30235, 30233, and 30706. All of these sections contain an element pertaining to the protection of existing structures and the protection of public beaches in danger of erosion. Under these sections, construction will be allowed through revetments, breakwaters, groins, or other means that alter natural shoreline processes; dredging of open coastal waters, lakes, wetlands, and other areas will be permitted only where less feasible environmentally damaging alternatives are not available. In particular, in Section 30233, dredging and spoils disposal, planned to avoid significant disruption to marine and wildlife habitats and water circulation, is allowed for restoration purposes. Section 30233 states further that dredge spoils suitable for beach replenishment should be transported to appropriate beaches or into suitable longshore current systems.

### California Code of Regulations; Title 14 Division 1.5

California Code of Regulations (CCR) Title 14 Division 1.5 establishes the regulations for the California Department of Forestry and Fire Protection (CAL FIRE) and is applicable in all State Responsibility Areas (SRAs)—areas where CAL FIRE is responsible for wildfire protection. Most of the unincorporated area of San Diego County is SRA and any development in these areas must comply with these regulations. Among other things, Title 14 establishes minimum standards for emergency access, fuel modification, setback to property line, signage, and water supply.

### California Code of Regulations; Title 14 Section 630(b)(103)

California Code of Regulations; Title 14 Section 630(b)(103) allows for the State Fish and Game Commission to designate areas as ecological reserves. All ecological reserves are maintained for the primary purpose of developing a statewide program for protection of rare, threatened, or endangered native plants, wildlife, aquatic organisms, and specialized terrestrial or aquatic habitat types. Pursuant to this regulation, the State Fish and Game Commission declared the property owned by the County and the State to be the San Elijo Lagoon Ecological Reserve.

### California Code of Regulations Title 17

On December 12, 2008, ARB approved subarticle 1 of CCR Title 17 to significantly reduce emissions from existing on-road diesel vehicles operating in California. The regulation requires affected trucks and buses to meet performance requirements between 2011 and 2023. Successful implementation of this measure will reduce diesel fuel consumption, truck operating costs, and nitrogen oxide emissions, as well as accelerate industry adoption of existing technologies to reduce GHG emissions.

### California Fish and Game Code

Under Sections 1601–1603 of the Fish and Game Code, agencies are required to notify the California Department of Fish and Wildlife (CDFW) prior to implementing any project that would divert, obstruct, or change the natural flow or bed, channel, or bank of any river, stream, or lake.

### California Endangered Species Act

California Endangered Species Act (CESA) (Fish and Game Code Section 2050 et seq.) prohibits the “take” (defined as “to hunt, pursue, catch, capture, or kill”) of state-listed species except as otherwise provided in state law. CESA, administered by CDFW, is similar to the federal Endangered Species Act (ESA), although unlike the federal law, CESA applies incidental take prohibitions to species currently petitioned for state-listing status (i.e., candidate species). State lead agencies are required to consult with CDFW to ensure that their authorized actions are not likely to jeopardize the continued existence of any state-listed species or result in the degradation of occupied habitat.

Under Section 2081, CDFW authorizes “take” of state-listed endangered, threatened, or candidate species through incidental take permits or memoranda of understanding if (1) the take is incidental to otherwise lawful activities, (2) impacts of the take are minimized and fully

mitigated, (3) the permit is consistent with regulations adopted in accordance with any recovery plan for the species in questions, and (4) the applicant ensures suitable funding to implement the measures required by CDFW.

### California Environmental Quality Act

The California Environmental Quality Act (CEQA) is a California statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. CEQA applies to certain activities of state and local public agencies. A public agency must comply with CEQA when it undertakes an activity defined by CEQA as a “project.” A project is an activity undertaken by a public agency or a private activity that must receive some discretionary approval (meaning that the agency has the authority to deny the requested permit or approval) from a government agency that may cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment. The environmental review required imposes both procedural and substantive requirements. At a minimum, an initial review of the project and its environmental effects must be conducted. Depending on the potential effects, a further, and more substantial, review may be conducted in the form of an environmental impact report. A project may not be approved as submitted if feasible alternatives or mitigation measures are able to substantially lessen the significant environmental effects of the project.

#### *Title 14 CCR Section 15131*

The regulations implementing CEQA state that economic or social factors of a project may be included in a CEQA document but shall not be treated as significant effects on the environment. However, economic or social effects of a project may be used to determine the significance of physical changes caused by a project. Additionally, economic, social, and housing factors should be considered by public agencies together with technological and environmental factors in deciding whether changes in a project are feasible to reduce or avoid the significant effects on the environment.

### California Fish and Game Code Section

#### *Section 1602 – Streambed Alteration*

All diversions, obstructions, or changes to the natural flow or bed, channel, or bank of any river, stream, or lake in California that supports wildlife resources are subject to regulation by CDFW under Fish and Game Code Section 1602. Under Section 1602, it is unlawful for any person, governmental agency, or public utility to do the following without first notifying CDFW:



- substantially divert or obstruct the natural flow of, or substantially change or use any material from, the bed, channel, or bank of any river, stream, or lake; or
- deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake.

The California Fish and Game Commission defines “stream” as a body of water that flows at least periodically or intermittently through a bed or channel that has banks and supports fish or other aquatic life. This definition includes watercourses with a surface or subsurface flow that supports or has supported riparian vegetation. CDFW’s jurisdiction within altered or artificial waterways is based on the value of those waterways to fish and wildlife. In practice, the CDFW typically extends its jurisdictional limit to the top of a stream, the bank of a lake, or outer edge of the riparian vegetation, whichever is wider. Riparian habitats do not always have identifiable hydric soils, or clear evidence of wetland hydrology as defined by the U.S. Army Corps of Engineers (Corps). Therefore, CDFW wetland boundaries often include, but extend beyond, Corps wetland boundaries. Jurisdictional boundaries under Fish and Game Code Section 1600–1616 (CDFW’s Lake and Streambed Alteration Program) may encompass an area that is greater than that under the jurisdiction of The Clean Water Act (CWA) Section 404. Therefore, jurisdictional waters of the state include jurisdictional “waters of the U.S.”; federal and state jurisdictions do overlap, but would remain distinct for regulatory administration and permitting purposes. A CDFW Streambed Alteration Agreement must be obtained for any project that would result in an impact on a river, stream, or lake.

#### *Section 3503 and 3503.5 – Protection of Birds, Nests, and Raptors*

Section 3503 of the California Fish and Game Code states that it is unlawful to take, possess, or needlessly destroy the nest or eggs of any bird. Section 3503.5 specifically states that it is unlawful to take, possess, or destroy any raptors (i.e., species in the orders Falconiformes and Strigiformes), including their nests or eggs. Typical violations of these codes include destruction of active nests resulting from removal of vegetation in which the nests are located. Violation of Section 3503.5 could also include failure of active raptor nests resulting from disturbance of nesting pairs by nearby project construction. This statute does not provide for the issuance of any type of incidental take permit.

#### *Fully Protected Species*

Protection of fully protected species is described in Sections 3511, 4700, 5050, and 5515 of the California Fish and Game Code. These statutes prohibit take or possession of fully protected species and do not provide for authorization of incidental take of fully protected species.

### California Government Code, Section 4216: Protection of Underground Infrastructure

This section of the California Government Code requires that an excavator must contact a regional notification center at least 2 days prior to excavation of any subsurface installation. The notification center will notify the utilities that may have buried lines within 1,000 feet of the excavation. Representatives of the utilities are required to mark the specific location of their facilities within the work area prior to the start of excavation. The construction contractor is required to probe and expose the underground facilities by hand prior to using power equipment.

### California Government Code Sections 6253, 6254, and 6254.10

These sections authorize county and city governments, respectively, to enact zoning ordinances for the protection and regulation of buildings and structures of special historical value.

### California Government Code Section 65860

This section allows counties or cities to regulate the use of buildings, structures, and land between business, industry, residential, and open space.

### California Health and Safety Code Sections 7050.5, 7051, and 7052

Section 7050.5 establishes that construction or excavation be stopped in the vicinity of discovered human remains until the coroner can determine whether the remains are those of a Native American. Section 7052 establishes that disturbance of Indian cemeteries is a felony. Section 7052 addresses the removal of human remains from internment or a place of storage while awaiting internment or cremation, with the intent to sell them or to dissect them without authority or with malice or wantonness as a public offense punishable by imprisonment in a state prison.

### California Human Health Screening Levels

The California Human Health Screening Levels (CHHSLs) are concentrations of 54 hazardous chemicals in soil or soil gas that the California Environmental Agency (Cal/EPA) considers to be below thresholds of concern for risks to human health. The CHHSLs were developed by the Office of Environmental Health Hazard Assessment on behalf of Cal/EPA and are contained in their report entitled *Human-Exposure-Based Screening Numbers Developed to Aid Estimation of Cleanup Costs for Contaminated Soil*. The thresholds of concern used to develop the CHHSLs are an excess lifetime cancer risk of one in a million (10<sup>-6</sup>) and a hazard quotient of 1.0 for noncancer health effects. The CHHSLs were developed using standard exposure assumptions

and chemical toxicity values published by EPA and Cal/EPA. The CHHSLs can be used to screen sites for potential human health concerns where releases of hazardous chemicals to soils have occurred. Under most circumstances, the presence of a chemical in soil, soil gas, or indoor air at concentrations below the corresponding CHHSLs can be assumed to not pose a significant health risk to people who may live (residential CHHSLs) or work (commercial/industrial CHHSLs) at the site.

#### California Native Plant Protection Act

The Native Plant Protection Act (NPPA) of 1977 (Fish and Game Code Sections 1900–1913) directed CDFW to carry out the Legislature’s intent to “preserve, protect and enhance rare and endangered plants in this State.” The NPPA gave the California Fish and Game Commission the power to designate native plants as “endangered” or “rare” and to protect endangered and rare plants from take.

#### California Penal Code, Title 14, Sections 622.5 and 623

These sections establish that it is a misdemeanor offense for any person other than the owner to willfully damage or destroy archaeological or historical features on public or privately owned land.

#### California Public Resources Code Section 5097.5

Public Resources Code (PRC) Section 5097.5 provides that no person shall knowingly and willfully excavate upon, or remove, destroy, injure, or deface any historic or prehistoric ruins, burial grounds, archaeological or vertebrate paleontological site, including fossilized footprints, inscriptions made by human agency, rock art, or any other archaeological, paleontological or historical feature, situated on public lands, except with the express permission of the public agency having jurisdiction over the lands. Violation of Section 5097.5 is a misdemeanor.

#### California Public Resources Code Sections 5097.9 through 5097.991

Sections 5097.9 through 5097.991 establish regulations for the protection of Native American religious places; establishes the Native American Heritage Commission (NAHC); establishes repatriation of Native American artifacts; and requires notification of discovery of Native American human remains to a most likely descendant.

### California Resolution Number 43

Resolution Number 43 requires all state agencies to cooperate with programs of archaeological survey and excavation, and to preserve known archaeological resources whenever reasonable.

### California Scenic Highway Law

The California Scenic Highway Law created the California Scenic Highway Program to preserve and protect scenic highway corridors from change that would diminish the aesthetic value of adjacent lands. The State Legislature established the program through Senate Bill (SB) 1467 (Farr), which was then added to the Streets and Highways Code, Section 260-283. The program defines the process for the designation of official scenic highways. A legislatively appointed body, the Departmental Transportation Advisory Committee, recommends program criteria, reviews applications, and advises the Director of the California Department of Transportation to revoke scenic highways that are no longer in compliance with the program.

### California State Coastal Conservancy 2013–2018 Strategic Plan

The California State Coastal Conservancy (Conservancy) recently released their draft 2013–2018 Strategic Plan (CSCC 2012). The Conservancy works with the regulatory agency, the California Coastal Commission, to protect, preserve, and restore the resources of the coastal zone. In 2012, the California legislature approved Senate Bill 1066, which amended Section 31113 of the Public Resources Code to clarify that the Conservancy may undertake and fund projects that address impacts to climate change. The draft 2013–2018 Strategic Plan (Strategic Plan) updated goals from the previous strategic plan to specifically include a goal to “enhance the resiliency of coastal communities and ecosystems to the impacts of climate change.” This is also aligned with the Conservancy’s *Climate Change Policy and Project Selection Criteria*, which identified new approaches to project design and implementation, recognizing that most projects will be affected by a changing climate and that “restoration” should be based on restoring processes rather than a static environmental setting.

### California State Lands Commission Public Trust Doctrine

The California State Lands Commission (CSLC) has exclusive jurisdiction over all of California’s tide and submerged lands and the beds of naturally navigable rivers and lakes, which lands are sovereign lands, and swamp and overflow lands and State School Lands (proprietary lands). Authority of the CSLC originates and is exercised from the state’s position as a landowner. The CSLC has statutory authority (Division 6 of the California Resources Code) to

approve appropriate uses of state lands under its jurisdiction and is the administrator of the Public Trust Doctrine over sovereign lands.

The Public Trust is a sovereign public property right held by the state or its delegated trustee for the benefit of the people. This right limits the uses of these lands to waterborne commerce, navigation, fisheries, open space, recreation, or other recognized Public Trust purposes. Sovereign lands may only be used for purposes consistent with this public trust; uses include commerce, navigation, fisheries, open space, wetlands, and other related trust uses. The CSLC has an oversight responsibility for tide and submerged lands legislatively granted in trust to local jurisdictions (PRC Section 6301).

Management responsibilities of the CSLC extend to activities within submerged lands (from mean high tide line) and those within 3 nautical miles offshore. These activities include oil and gas developments; harbor development and management oversight; construction and operation of any offshore pipelines or other facilities; dredging; reclamation; use of filled sovereign lands; topographical and geological studies; and other activities that occur on these lands. The CSLC also surveys and maintains title records of all state sovereign lands as well as settles issues of title and jurisdiction. Authorization from the CSLC would be required for implementation of the materials disposal/reuse project component.

#### California Street and Highways Code

The California Street and Highways Code establishes standards for undertaking the development and designation of official scenic highways and assigns responsibility for the development of scenic highways to local jurisdictions. It establishes the State Scenic Highway system by designating highways that are either eligible for designation as a State Scenic Highway or have been designated as such. The code defines the criteria under which freeways may be designated a California Historic Parkway as a part of the overarching State Scenic Highway system.

#### City of Encinitas Climate Action Plan

The City of Encinitas adopted a climate action plan (CAP) in 2011 that provides the framework for reducing citywide GHG emissions 12% from their 2005 emissions level by the year 2020. The strategies that the City will implement to achieve those reductions include encouraging alternative transportation, energy efficiency requirements for new residential and nonresidential buildings, installing renewable energy sources, and water use and waste reduction measures. The CAP describes future actions that may include developing an implementation checklist for project compliance and developing GHG thresholds. The CAP focuses GHG reduction strategies on development projects and does not include specific project-level quantitative thresholds.

## City of Encinitas General Plan and Local Coastal Program Land Use Plan

The Encinitas General Plan (last amended in 2009 and currently being updated) identifies issues and opportunities relative to planning decisions within Encinitas. The General Plan designates San Elijo Lagoon as Ecological Resource/Open Space/Parks. San Elijo Lagoon and the materials placement sites within Encinitas are located within the coastal zone and are subject to the policies and provisions included in the General Plan's LCP LUP in compliance with the California Coastal Act of 1976. The General Plan's Resource Management Element identifies policies relevant to both lagoon restoration and materials placement activities. The City has authorization to issue coastal development permits, but the California Coastal Commission retains permitting authority over San Elijo Lagoon.

The City of Encinitas General Plan specifies the following goal relative to protection of aesthetic resources (City of Encinitas 1995):

*Goal 9: Preserve the existence of present natural open spaces, slopes, bluff, lagoon areas, and maintain the sense of spaciousness and semirural living within the I-5 View Corridor and within other view corridors, scenic highways, and vista/view sheds as identified in the Resource Management Element (Coastal Act/30240/30251).*

## City of Encinitas General Plan; Resource Management Element

The Resource Management Element of the General Plan lists the following goals and policies relative to protection of visual access and vista points:

*Goal 4: The City, with the assistance of the State, Federal, and Regional Agencies, shall provide the maximum visual access to coastal and inland views through the acquisition and development of a system of coastal and inland vista points (Coastal Act/30251).*

*Policies 4.1, 4.2, and 4.3 specify development and/or maintenance of the following vista points within the study area:*

- *San Elijo and Kilkenny (overlooking lagoon and coast)*
- *West end of "D" Street*
- *West end of "F" Street*
- *West end of "J" Street*
- *West end of "I" Street*

- *Leucadia Beach State Park*
- *Moonlight State Beach*

*Existing vista points to be maintained include:*

- *Vista point on southbound I-5*
- *Cardiff Beach State Park*

*Goal 4.7 identifies scenic highways/visual corridors to be designated as:*

- *San Elijo Ave. (and Highway 101) south of Cardiff Beach State Park to Santa Fe Drive*
- *Manchester Ave. from San Elijo Ave. to Encinitas Blvd. Interstate 5, crossing San Elijo*

The Resource Management Element of the General Plan lists the following policy relative to protection of paleontological and cultural resources:

Policy 7.1: Require that paleontological, historical, and archaeological resources in the planning area are documented, preserved or salvaged if threatened by new development.

#### City of San Diego General Plan and Local Coastal Program

The proposed materials placement site at Torrey Pines is located within the coastal zone as designated by the City of San Diego General Plan (2008). The City's LCP guides development in sensitive coastal areas and provides for the preservation of natural resources. The City's LCP requires any project occurring within the coastal zone to be reviewed by the City and the California Coastal Commission. The materials placement site is also subject to the plans and policies identified in the San Diego Coastal State Park System General Plan, Volume 8: Torrey Pines State Beach and State Reserve (DPR 1984). This plan identifies improvements to facilities at Torrey Pines State Beach and policies intended to protect natural resources in the vicinity of the State Beach.

#### City of Solana Beach General Plan and Local Coastal Program Land Use Plan Local Implementation Plan (LIP)

The City of Solana Beach General Plan identifies policies and programs to protect and conserve the city's natural resources and sensitive open space areas. It also identifies goals and policies regarding shoreline protection and supports regional efforts to manage beach sand placement. Solana Beach is also located entirely within the state's coastal zone. On March 7, 2012, the

California Coastal Commission approved the City's first LCP/LUP (City of Solana Beach 2012). The City's LCP consists of a LUP and LIP, which together would meet the Coastal Act requirements. The LCP/LUP represents a collaborative planning effort initiated by the City and developed over the course of many years with the participation of various interests, including environmental groups and property owners. The next step is for the City Council to ratify the LCP/LUP. In addition, the LIP still needs to be approved by both the Coastal Commission and the City Council.

The General Plan specifies the following policy relative to aesthetic resources:

Goal 3.2: Protect and enhance sensitive open space areas and viewsheds.

#### City of Solana Beach General Plan; Circulation Element

The City of Solana Beach Circulation Element of the City of Solana Beach's General Plan states that Highway 101 is classified as a state-designated scenic highway. This is identified as:

- A route with unique or special aesthetic and visual resources that should be protected and upgraded through sensitive highway design and the regulation of development within the scenic corridor.
- A route that provides a pleasant driving environment and community enhancement.

#### City of Solana Beach General Plan; Conservation and Open Space Element

The Open Space and Conservation Element of the General Plan list the following objectives and policies relative to protection of cultural and paleontological resources:

Objective 6.0: Prevent the loss of important historical, archaeological, and paleontological resources.

The Open Space and Conservation Element of the General Plan lists the following objectives and policies relative to protection of visual access and vista points:

Objective 1.0: Preserve existing open spaces at appropriate locations throughout the city.

Policy 1a. The city shall restrict development along the bluffs overlooking Solana Beach and other areas ... to those uses which retain the open space character of these areas ...in accordance with the open space plan.



Policy 1b: The city shall ensure the preservation of existing public beaches, parks, trails, open space areas, and golf courses pursuant to the adopted land use element of this general plan.

Objective 1.0: Preserve existing open spaces at appropriate locations throughout the city.

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Policy 1b: The city shall ensure the preservation of existing public beaches, parks, trails, open space areas, and golf courses pursuant to the adopted land use element of this general plan.

#### Civil Rights Act of 1964

Title VI of the Civil Rights Act prohibits discrimination on the basis of race, color, or national origin by all federal agencies or activities receiving federal financial assistance.

#### Clean Air Act

At the federal level, EPA is charged with implementing national air quality programs. EPA's air quality mandates are drawn primarily from the federal Clean Air Act (CAA), which was enacted in 1970. The most recent major amendments made by Congress occurred in 1990.

The CAA required EPA to establish primary and secondary NAAQS. The CAA also required each state to prepare an air quality control plan, which is referred to as a State Implementation Plan (SIP). The federal Clean Air Act Amendments of 1990 (CAAA) added requirements for states with nonattainment areas to revise their SIPs to incorporate additional control measures to reduce air pollution. EPA is responsible for reviewing all SIPs to determine conformation to the mandates of the CAAA and to determine whether implementation would achieve air quality goals. If EPA determines an SIP is inadequate, a Federal Implementation Plan that imposes additional control measures may be prepared for the nonattainment area.

#### *General Conformity*

General conformity requirements were adopted by Congress as part of the CAA and were implemented by EPA regulations in 1993. The purpose of the general conformity program is to ensure that actions taken by the federal government do not undermine state or local efforts to achieve and maintain NAAQS.

The General Conformity Rule (40 CFR Sections 51.850–51.860 and 93.150–93.160), requires any federal agency responsible for an action in a federal nonattainment or attainment/maintenance area to demonstrate conformity to the applicable SIP. To do so, the federal agency must determine that the action is either exempt from General Conformity Rule requirements or subject to a formal conformity determination. All reasonably foreseeable emissions predicted to result from the action—both direct and indirect—must be considered, and the location and quantity of emissions must be identified.

A federal action is exempt and considered to conform to the SIP if an applicability analysis shows that total direct and indirect emissions of pollutants from construction and operation of the action would be less than specified emission-rate thresholds, known as *de minimis* levels. The *de minimis* levels are based on the attainment/maintenance and nonattainment designations and classifications for the project area. If the action is not determined to be exempt and the emissions would exceed the *de minimis* levels, a formal air quality conformity analysis is required. The action cannot proceed unless mitigation measures are identified that would bring the project into conformance. Only federal nonattainment and maintenance pollutant emissions are considered under a general conformity analysis.

### *Toxic Air Contaminants*

In addition to criteria pollutants, air quality regulations also focus on localized hazardous air pollutants, which are also called toxic air contaminants (TACs). For those TACs that may cause cancer there is, in general, no minimum concentration that does not present some risk. This contrasts with the criteria air pollutants, for which acceptable levels of exposure can be determined and ambient standards have been established (i.e., NAAQS).

EPA and ARB have ongoing programs to identify and regulate TACs. Among the many substances identified as TACs are diesel exhaust particulates, asbestos, and inorganic lead. The regulation of TACs is generally through statutes and rules that require the use of the “maximum achievable” or “best available” control technology (MACT or BACT) to limit TAC emissions.

Particulate exhaust emissions from diesel-fueled engines (diesel PM) were identified as a TAC by ARB in 1998. The control of diesel PM emissions is a prominent concern of regulatory agencies at all levels. The majority of the estimated local health risk from TACs is from diesel PM. The composition of diesel PM emissions from diesel-fueled engines varies depending on engine type, operating conditions, fuel composition, lubricating oil, and whether an emission control system is present. Federal and state efforts to reduce diesel PM emissions have focused on the use of improved fuels, adding particulate filters to engines, and requiring the production of new-technology engines that emit fewer exhaust particulates.

MACT/BACT for asbestos and lead have been identified for many years and there are established rules and procedures to prevent dispersion and inhalation of these substances. Asbestos is a naturally occurring mineral that was used in building materials for thermal and acoustical insulation and fire resistance until the mid-1980s and a partial ban by EPA was imposed in 1989. Lead was used in paint for housing until 1978 when lead-based paint was banned by EPA for use in housing. Asbestos and lead, when disturbed during building demolition, can become airborne as inhalable health hazard pollutants and, therefore, require abatement before demolition.

#### *Proposed Findings for Greenhouse Gases under the Federal Clean Air Act*

On December 7, 2009, EPA signed two distinct findings regarding GHGs under Section 202(a) of the CAA:

- Endangerment Finding: The Administrator finds that the current and projected concentrations of the six principal GHGs threaten the public health and welfare of current and future generations.
- Cause or Contribute Finding: The Administrator finds that the combined emissions of these GHGs from new motor vehicles and new motor vehicle engines contribute to the GHG pollution which threatens public health and welfare.

#### Clean Water Act

The principal law that serves to protect the nation's waters is the Federal Water Pollution Control Act, which was originally enacted in 1948. This legislation, more commonly referred to as the Clean Water Act (CWA), underwent significant revision when Congress, in response to the public's growing concern of widespread water pollution, passed the Federal Water Pollution Control Act Amendments of 1972. The 1972 legislation established two fundamental, national goals: eliminate the discharge of pollutants into the nation's waters and achieve water quality that is both "fishable" and "swimmable." The 1972 amendments to the CWA also prohibited the discharge of any pollutant to waters of the U.S. from any point source (e.g., a discharge pipe) unless the discharge was authorized by a National Pollutant Discharge Elimination System (NPDES) permit. However, non-point source discharges (i.e., storm water or urban runoff) were not fully covered under the NPDES permit program until Congress amended the CWA in 1987. In the 1987 CWA amendments, Congress directed EPA to establish a permitting framework under the NPDES program to address non-point source storm water discharges associated with urban areas and certain industrial activities.

Relative to water quality protection and management for the proposed project, several sections of the CWA are important:

- Section 303(d) – TMDLs
- Section 401 – Water Quality Certification
- Section 402 – NPDES Program
- Section 404 – Discharge of Dredge or Fill Material

These sections are further described below:

#### *Section 303(d) – Total Maximum Daily Loads*

CWA Section 303(d) mandates that states, territories, and authorized tribes develop a list of segments of water that do not meet water quality standards, even after pollution control technology has been implemented for point sources of pollution. The Regional Water Quality Control Boards (RWQCBs) are required to prepare the CWA Section 303(d), List of Water Quality Limited Segments Requiring TMDLs. RWQCBs are required by law to establish total maximum daily loads (TMDLs). These are action plans designed to improve the quality of water resources. As part of the TMDL process, municipalities must examine the water quality problems and identify sources of pollutants in order to create specific actions designed to improve water quality. The most current approved 303(d) list is from 2010 (RWQCB 2010).

#### *Section 401 – Water Quality Certification*

Every applicant for a federal permit or license for any activity that may result in a discharge to a waterbody must obtain State Water Quality Certification for the proposed activity and comply with state water quality standards prescribed in the certification. In California, these certifications are issued by the State Water Resources Control Board (SWRCB) under the auspices of the RWQCB. Most certifications are issued in connection with the Corps' CWA Section 404 permits for dredge and fill discharges.

#### *Section 402 – NPDES Program*

Section 402 of the CWA establishes the NPDES permit program to regulate the discharge of pollutants from point sources. The CWA defines point sources of water pollutants as “any discernible, confined, and discrete conveyance” that discharges or may discharge pollutants.

In November 1990, in compliance with the 1987 amendments to the CWA, EPA published NPDES permit application requirements for municipal and industrial storm water discharges. These application requirements include the following:

- Municipalities that own and operate separate storm drain systems serving populations of 100,000 or more, or that contribute significant pollutants to waters of the U.S., must obtain a municipal storm water NPDES permit.
- A municipality must develop and implement a storm water management program to obtain a permit.
- The municipal storm water management program must address how to reduce pollutants in industrial storm water discharges and other discharges that are contributing a substantial pollutant load to their systems.
- Facilities that are discharging storm water associated with industrial activity, including construction activities that disturb 5 or more acres, must acquire industrial storm water NPDES permit coverage.

Permitting the construction or modification of outfall structures, where the discharged effluent is authorized or otherwise complies with an NPDES Permit, also is governed under Nationwide Permit #7, requiring the permittee to submit a pre-construction notification to the district USACE engineer before beginning any project activity.

Although the NPDES Permit program initially focused on point source discharges of municipal and industrial wastewater that were assigned individual permits for specific outfalls, results of the Nationwide Urban Runoff Program identified contaminated storm water as one of the primary causes of water quality impairment. To regulate runoff-related (nonpoint source) discharges, the U.S. Environmental Protection Agency developed a variety of general NPDES Permits for controlling industrial, construction, and municipal storm water discharges, including:

- Commercial, light industrial, and institutional activities;
- Construction activities under 5 acres; and
- Municipal storm drain systems serving populations under 100,000.

The NPDES permit program requires the development and implementation of storm water management plans to reduce such discharges and the pollutants that they contain.

Implementation of the CWA is the responsibility of EPA; however, in many states, EPA has delegated administration of the NPDES permit program to the state water quality control

authority. In California, the SWRCB and its RWQCBs administer the NPDES permit program. Currently, discharges from construction, industrial, and municipal activities are regulated under the NPDES permit program.

#### *Section 404 – Discharge of Dredge or Fill Material*

This section of the CWA establishes a permit program, administered by the Corps, to regulate the discharge of dredge or fill materials into waters of the U.S., including wetlands. Activities in waters of the U.S. that are regulated under this program include fills for development, water resource projects (such as dams and levees), infrastructure development (such as highways and airports), and conversion of wetlands to uplands for farming and forestry.

#### Coastal Regional Sediment Management Plan (RSM Plan)

The San Diego Association of Governments' (SANDAG) Coastal Regional Sediment Management Plan (RSM Plan) is a guidance and policy document that outlines solutions to restore and maintain coastal beaches and other critical areas of sediment deficit or excess in the San Diego region. The RSM Plan specifically identifies Beach Erosion Concern Areas (BECAs) throughout California. All materials placement sites for the proposed project are identified as BECAs. The RSM plan also identifies potential sources sediment for beach nourishment, including materials dredged as part of coastal wetlands and lagoon restoration (SANDAG 2009). The proposed project presents an opportunity to further the goals of the RSM Plan through reuse of beach-quality sand in areas along the coast identified as being in critical sediment defect.

#### Coastal Zone Management Act

The U.S. Congress passed the 1972 Coastal Zone Management Act (CZMA) to manage the nation's coastal resources. The CZMA is administered by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration's Office of Ocean and Coastal Resource Management. The CZMA balances competing land and water issues in coastal zones through the National Coastal Zone Management Program. Its goal is to preserve, protect, develop, and, where possible, restore or enhance the resources of the nation's coastal zone. Federal activities within or affecting the coastal zone must, to the maximum extent practicable, be consistent with the state's coastal management program.

#### Construction Dewatering Permits

Construction dewatering discharges must be permitted either by the San Diego RWQCB under the general NPDES Permit CAG919002 (Order R9-2008-0002) for construction dewatering

discharge to surface waters or authorized to discharge to local publicly owned treatment works (i.e., industrial or sanitary sewer system of municipal wastewater treatment plants). Discharge via either of these mechanisms must meet applicable water quality objectives, constituent limitations, and pretreatment requirements.

### Construction General Permit

The State of California adopted a new Construction General Permit effective on July 1, 2010. SWRCB Water Quality Order 2009-0009-DWQ (Construction General Permit; as amended by Order 2010-0014-DWQ) regulates construction site storm water management. Dischargers whose projects disturb 1 or more acres of soil, or whose projects disturb less than 1 acre but are part of a larger common plan of development that in total disturbs 1 or more acres, are required to obtain coverage under the general permit for discharges of storm water associated with construction activity. Construction activity subject to this permit includes clearing, grading, and disturbances to the ground, such as stockpiling or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility.

Permit applicants are required to submit a Notice of Intent to the SWRCB and to prepare a Storm Water Pollution Prevention Plan (SWPPP). The SWPPP identifies best management practices (BMPs) that must be implemented to reduce construction effects on receiving water quality based on pollutants. The BMPs identified are directed at implementing both sediment and erosion control measures and other measures to control chemical contaminants. The SWPPP must also include descriptions of the BMPs to reduce pollutants in storm water discharges after all construction phases have been completed at the site (post-construction BMPs). The SWPPP must also contain monitoring programs dependent on site activities and 303(d) impairments of water bodies that are affected by project drainage.

### Council on Environmental Quality Guidance

On February 18, 2010, the Council on Environmental Quality (CEQ) Chair issued a memorandum recognizing that many federal actions would result in the emission of GHGs, and that, where a proposed federal action may emit GHG emissions “in quantities that the agency finds may be meaningful,” CEQ proposes that an agency’s National Environmental Policy Act (NEPA) analysis focus on aspects of the environment that are affected by the proposed action and the significance of climate change for those aspects of the affected environment. In particular, the guidance proposes a reference point of 25,000 metric tons (MT) per year of direct GHG emissions as a “useful indicator” of when agencies should evaluate climate change impacts in their NEPA documents. CEQ notes that this indicator is not an absolute standard or threshold to trigger the discussion of climate change impacts.

## County of San Diego General Plan and San Dieguito Community Plan

The County of San Diego General Plan and San Dieguito Community Plan identify San Elijo Lagoon as an important natural preserve and recreational area. The General Plan's Conservation and Open Space Element contains policies related to the management of valuable natural resources where public recreational opportunities are compatible with the preservation of those resources.

## Earthquake Hazards Reduction Act

In 1977, Congress passed the Earthquake Hazards Reduction Act (Public Law 95-124) establishing the National Earthquake Hazards Reduction Program as a long-term earthquake risk reduction program for the United States. The program initially focused on research, led by the U.S. Geologic Survey (USGS) and National Science Foundation, toward understanding and ultimately predicting earthquakes. The current program activities are focused on four broad areas:

- Developing effective measures to reduce earthquake hazards;
- Promoting the adoption of earthquake hazard reduction activities by federal, state, and local governments, national building standards and model building code organizations, engineers, architects, building owners, and others who play a role in planning and constructing buildings, bridges, structures, and critical infrastructure or "lifelines";
- Improving the basic understanding of earthquakes and their effects on people and infrastructure, through interdisciplinary research involving engineering, natural sciences, and social, economic, and decision sciences; and
- Developing and maintaining the Advanced National Seismic System, the George E. Brown Jr. Network for Earthquake Engineering Simulation, and the Global Seismic Network.

## Endangered Species Act

The federal ESA of 1973 (16 United States Code [USC] Sections 1531 et seq.) directs the U.S. Fish and Wildlife Service (USFWS) to identify and protect endangered and threatened species and their critical habitat, and to provide a means to conserve their ecosystems. Section 9 of the ESA makes it unlawful for a person to take a listed animal without a permit. "Take" is defined by the ESA as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct" (16 USC 1532(19)). Through regulations, the term



“harm” is interpreted to include actions that modify or degrade habitats to a degree that significantly impairs essential behavioral patterns, including breeding, feeding, or sheltering.

Section 7 of the ESA directs USFWS to use its existing authority to conserve threatened and endangered species and, in consultation with federal agencies, ensure that any action authorized, funded, or carried out by such agency does not jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat. Critical habitat is a specific geographic area(s) that is essential for the conservation of a threatened or endangered species and that may require special management and protection. Critical habitat may include an area that is not currently occupied by the species but that would be needed for its recovery.

Section 7(a)(2) requires federal agencies to consult with USFWS to ensure that they are not undertaking, funding, permitting, or authorizing actions likely to jeopardize the continued existence of listed species. In consultation for those species with critical habitat, federal actions must also ensure that activities do not adversely modify critical habitat to the point that it would no longer aid in the species’ recovery.

#### Escondido Creek Watershed Restoration Action Plan

The Escondido Creek Watershed Restoration Action Plan provides background information about the Escondido Creek Watershed for use in watershed analyses; to identify gaps in information; and to prioritize potential restoration, enhancement, and acquisition of natural areas. Restoration of San Elijo Lagoon was identified within this plan as an action that would help restore and improve watershed quality.

#### Executive Order 11988 – Floodplain Management

EO 11988 directs federal agencies to avoid to the extent practicable and feasible short- and long-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. Further, EO 11988 requires the prevention of uneconomic, hazardous, or incompatible use of floodplains; protection and preservation of the natural and beneficial floodplain values; and consistency with the standards and criteria of the National Flood Insurance Program (NFIP).

#### Executive Order 11990 – Protection of Wetlands

EO 11990 is an overall wetlands policy for all agencies managing federal lands, sponsoring federal projects, or providing federal funds to state or local projects. This EO 11990 requires that when a construction project involves wetlands, a finding must be made by the federal agency that

there is no practicable alternative to such construction, and that the proposed action includes all practicable measures to minimize impacts to wetlands resulting from such use.

#### Executive Order 12088

EO 12088 requires federal compliance with applicable pollution control standards concerning air and water pollution, and hazardous materials and substances. Federal agencies are directed to consult with state and local agencies concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution.

#### Executive Order 12898

EO 12898 and the President's February 11, 1994 Memorandum on Environmental Justice (sent to the heads of all departments and agencies) are intended to ensure that federal departments and agencies identify and address disproportionately high and adverse human health or environmental effects of their policies, programs, and activities on minority populations and low-income populations. This consideration extends to permits issued by federal agencies.

#### Executive Order 13045

EO 13045, Protection of Children from Environmental Health Risks and Safety Risks, focuses on environmental health risks and safety risks that may affect children. EO 13045 was prompted by the recognition that children are more sensitive than adults to adverse environmental health and safety risks because they are still undergoing physiological growth and development.

#### Executive Order 13112, Invasive Species

EO 13112 requires federal agencies to "prevent the introduction of invasive species and provide for their control and to minimize the economic, ecological, and human health effects that invasive species cause." An invasive species is defined by EO 13112 as "an alien species [a species not native to the region or area] whose introduction does or is likely to cause economic or environmental harm or harm to human health."

#### Executive Order S-1-07

EO S-1-07, which was signed in 2007, establishes a goal that the carbon intensity of transportation fuels sold in California should be reduced by a minimum of 10% by 2020.

### Executive Order S-3-05

EO S-3-05, signed in 2005, states that California is vulnerable to the impacts of climate change. It declares that increased temperatures could reduce the Sierra snowpack, further exacerbate California's air quality problems, and potentially cause a rise in sea level. To combat those concerns, EO S-3-05 established total GHG emission targets. Specifically, emissions are to be reduced to the 2000 level by 2010, the 1990 level by 2020, and to 80% below the 1990 level by 2050.

Further, the Secretary of CalEPA is directed to coordinate a multi-agency effort to reduce GHG emissions to the target levels. The Secretary will also submit biannual reports to the governor and California State legislature describing progress made toward reaching the emission targets, impacts of global warming on California's resources, and mitigation and adaptation plans to combat these impacts.

### Executive Order S-13-08

EO S-13-08 launched a major initiative for improving the state's adaptation to climate impacts from sea level rise, increased temperatures, shifting precipitation, and extreme weather events. It ordered a California Sea Level Rise Assessment Report to be conducted by the National Academy of Sciences, which was released in 2012 (COSLR 2012). It also ordered the development of a California Climate Change Adaptation Strategy by the California Natural Resources Agency (CNRA). The Strategy, published in December 2009, assesses the state's vulnerability to climate change impacts, and outlines possible solutions that can be implemented within and across state agencies to promote resiliency (CNRA 2009). The Strategy focuses on seven areas: public health, biodiversity and habitat, ocean and coastal resources, water management, agriculture, forestry, and transportation and energy infrastructure. A progress report was been issued in 2010 describing progress for each sector, amending CEQA, and the Cal-Adapt website was developed to support local governments in adaptation planning (CNRA 2010).

### Executive Order 11988 – Floodplain Management

Executive Order 11988 directs federal agencies to avoid, to the extent practicable and feasible, short- and long-term adverse impacts associated with the occupancy and modification of floodplains, and to avoid direct and indirect support of floodplain development wherever a practicable alternative exists. Furthermore, Executive Order 11988 requires the prevention of uneconomic, hazardous, or incompatible use of floodplains; protection and preservation of natural and beneficial floodplain values; and consistency with the standards and criteria of the

National Flood Insurance Program (NFIP). The basic tools for regulating construction in potentially hazardous floodplain areas are local zoning techniques and Federal Emergency Management Agency (FEMA) floodplain mapping. The Federal Insurance Rate Map (FIRM) is the official map created and distributed by FEMA and NFIP that delineates Special Flood Hazard Areas (SFHAs)—areas that are subject to inundation by a base flood—for every county and community that participates in the NFIP.

For projects that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source, and thus would result in the modification of the existing regulatory floodway, effective Base Flood Elevations, or an SFHA, a Conditional Letter of Map Revision (CLOMR) would be necessary. A CLOMR is FEMA’s comment on a proposed project that would make such hydrologic modifications. A Letter of Map Revision (LOMR) is FEMA’s modification to an effective FIRM based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway.

#### Magnuson-Stevens Fishery Management and Conservation Act, as amended 1996 (Public Law 104-267)

Federal agencies must consult with National Oceanic and Atmospheric Administration (NOAA) Fisheries on actions that may adversely affect Essential Fish Habitat (EFH). EFH is defined as those “waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” NOAA Fisheries encourages streamlining the consultation process using review procedures under NEPA, Fish and Wildlife Coordination Act, CWA, and/or federal ESA provided that documents meet requirements for EFH assessments under Section 600.920(g). EFH assessments must include (1) a description of the proposed action, (2) an analysis of effects, including cumulative effects, (3) the federal agency’s views regarding the effects of the action on EFH, and (4) proposed mitigation, if applicable.

#### Mandatory Greenhouse Gas Reporting Rule

On October 30, 2009, EPA published the final version of the Mandatory Greenhouse Gas Reporting Rule in the *Federal Register*. In general, this national reporting requirement will provide EPA with accurate and timely GHG emissions data from facilities that emit 25,000 MT or more of carbon dioxide (CO<sub>2</sub>) per year.

#### Marine Life Protection Act

The Marine Life Protection Act (MLPA) of 1999 directs the state to redesign California’s system of marine protected areas to function as a network in order to increase coherence and

effectiveness in protecting the state's marine life and habitats, marine ecosystems, and marine natural heritage, as well as to improve recreational, educational, and study opportunities provided by marine ecosystems subject to minimal human disturbance. Under the MLPA, San Elijo Lagoon is designated as State Marine Conservation Area (SMCA). The Moonlight Beach and Cardiff receiver sites, as well as SO-6, fall within the Swami's State Marine Conservation Area.

### Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA) was enacted on October 21, 1972. All marine mammals are protected under the MMPA. The MMPA was enacted in response to increasing concerns among scientists and the public that significant declines in some species of marine mammals were caused by human activities. The MMPA established a national policy to prevent marine mammal species and population stocks from declining beyond the point where they ceased to be significant functioning elements of the ecosystems of which they are a part. The MMPA prohibits, with certain exceptions, the "take" of marine mammals in U.S. waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the United States. The MMPA was amended substantially in 1994 to provide certain exceptions to the take prohibitions, including for small takes incidental to specified activities, when access by Alaska Natives to marine mammal subsistence resources can be preserved, and permits and authorizations for scientific research; and a program to authorize and control the taking of marine mammals incidental to commercial fishing operations.

### Marine Protection, Research, and Sanctuaries Act

In 1972, Congress enacted the Marine Protection, Research, and Sanctuaries Act (MPRSA, also known as the Ocean Dumping Act) to prohibit the dumping of material into the ocean that would unreasonably degrade or endanger human health or the marine environment. MPRSA regulates the ocean dumping of all material beyond the territorial limit (three miles from shore) and prevents or strictly limits dumping material that "would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities." Virtually all material ocean dumped today is dredged material (sediments) removed from the bottom of waterbodies in order to maintain navigation channels and berthing areas. Other materials that are currently ocean disposed include fish wastes, human remains, and vessels. Ocean dumping cannot occur unless a permit is issued under the MPRSA. Section 103 of MPRSA authorizes the Corps to issue permits for transport and disposal of dredged material (i.e., material excavated from navigable U.S. waters) at designated ocean disposal sites, using EPA's environmental criteria and subject to EPA's concurrence. For all other materials, EPA is the

permitting agency. EPA is also responsible for designating recommended ocean dumping sites for all types of materials.

### Migratory Bird Treaty Act

The Migratory Bird Treaty Act (MBTA) (16 USC Sections 703–712) makes it unlawful to take or possess migratory birds, except as permitted by USFWS. The MBTA protects all migratory bird, their eggs, their body parts, or their nests. Essentially all avian species native to the United States are protected under the provisions of the MBTA; introduced species and nonmigratory upland game birds are not protected by the MBTA. “Take” under the MBTA is defined “to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect” protected birds (50 Code of Federal Regulations [CFR] 10.12). The current list of species protected by the MBTA includes several hundred species. Nearly all native birds in the San Diego region are considered migratory. Permits for take of nongame migratory birds can be issued only for specific activities, such as scientific collecting, rehabilitation, propagation, education, taxidermy, or protection of human health or safety and personal property.

### National Flood Insurance Act

The National Flood Insurance Act of 1968 established the NFIP. The NFIP is a federal program administered by the Flood Insurance Administration of the Federal Emergency Management Agency (FEMA). It enables individuals who have property (a building or its contents) within the 100-year floodplain to purchase insurance against flood losses. FEMA works with the states and local communities to identify flood hazard areas and publishes a flood hazard boundary map of those areas.

### Natural Community Conservation Plans and Habitat Conservation Plans

Over the past two decades, regional planners have focused considerable effort on preparation of four habitat conservation plans (HCPs): the Multiple Species Conservation Program (MSCP) South, finalized in 1998; the Multiple Habitat Conservation Program (MHCP), finalized in 2003; the North County Multiple Species Conservation Program (NCMSCP), anticipated for completion in 2011; and the East County MSCP, which is expected to begin after the NCMSCP is adopted.

Six jurisdictions (the cities of Carlsbad, Chula Vista, La Mesa, Poway, San Diego, and the southern portion of the County of San Diego), have approved HCPs and signed implementing agreements that collectively cover 20% of the San Diego region. Seven jurisdictions (the cities of

Encinitas, Escondido, Oceanside, San Marcos, Santee, Vista, and the northern portion of the County of San Diego) are working on agreements that cover another 73% of the region. Seven jurisdictions (the cities of Coronado, Del Mar, El Cajon, Imperial Beach, Lemon Grove, National City, and Solana Beach), which collectively cover slightly more than 1% of the region, are not pursuing agreements because they have limited natural habitats within their boundaries. The remaining 6% of the San Diego region is on military land conserved by Integrated Natural Resource Management Plans, which are developed under voluntary, cooperative agreements among a Department of Defense installation, USFWS, and CDFW.

The regional HCPs in the San Diego region are designed to provide an umbrella of protection for multiple species by conserving their habitats and the linkages that allow them to travel between habitats. The HCPs were designed under the State's Natural Communities Conservation Planning program.

Two regional planning documents cover the San Elijo Lagoon Ecological Reserve, the North County Multiple Species Conservation Plan (NC Plan) (County of San Diego 2009) and the MHCP (AMEC et al. 2003). The NCMSCP NC Plan expands the County MSCP into the northwestern unincorporated areas of the County. The portions of the lagoon owned by the County of San Diego are within the NC Plan area. Portions of the Biological Study Area are within conservation areas referred to as the Preserve Area and Pre-Approved Mitigation Area under the draft NCMSCP NC Plan (County of San Diego 2009).

The MHCP plan serves as an umbrella document to guide the preparation of subarea plans by each participating city and does not itself receive any permits (AMEC et al. 2003). To be approved, subarea plans must be consistent with the conservation and policy guidelines of the MHCP plan. The Encinitas Subarea Plan is the MHCP implementing document within the Project Area (Ogden et al. 2001). The Encinitas Subarea Plan includes lands under the ownership of the San Elijo Lagoon Conservancy and State of California as well as some lands owned by the County of San Diego within the MHCP. The Encinitas Subarea Plan designates the planned land use for the lagoon as parks/open space. The lagoon is considered a part of the Hardline Focused Planning Area within the Subarea Plan.

Both the NCMSCP NC Plan and Encinitas Subarea Plan are currently in draft form; however, lands in both plans would eventually need to be reconciled in one plan or the other. Activities within these areas need to be consistent with the NCMSCP NC Plan and MHCP. However, any take would be issued, as needed, by USFWS and CDFW through Section 7 consultation and CESA.

### National Environmental Policy Act, *as amended*

NEPA established a U.S. national policy promoting the enhancement of the environment and also established the CEQ. NEPA requires federal agencies to conduct an interdisciplinary analysis of the environmental consequences of their actions early in the decision-making process. NEPA is to ensure that environmental factors are weighted equally when compared to other factors in the decision-making process undertaken by federal agencies. CEQ regulations (40 CFR Parts 1500–1508) set the standard for NEPA compliance. CEQ also requires agencies to create their own NEPA implementing procedures. These procedures must meet the CEQ standard while reflecting each agency's unique mandate and mission. Consequently, NEPA procedures vary from agency to agency. Further procedural differences may derive from other statutory requirements and the extent to which federal agencies use NEPA analyses to satisfy other review requirements.

### National Highway System Designation Act of 1995

This landmark legislation designates almost 260,000 kilometers (160,955 miles) of roads as the National Highway System (NHS). Title III, Section 304 of the legislation Guidelines for Determining Significance 8 Visual Resources allows, but does not mandate, design standards for NHS projects that take into account the constructed and natural environment of the area including the environmental, scenic, aesthetic, historic, community, and preservation impacts of the proposed activity.

### National Highway Transportation Safety Administration Fuel Economy Standards for Medium- and Heavy-Duty Engines

On August 9, 2011, EPA and the National Highway Transportation Safety Administration announced the first national fuel economy standards for medium- and heavy-duty trucks that will be implemented for new engines with model years 2014 through 2018. The agencies estimate that the standards will save an estimated 270 million metric tons of CO<sub>2</sub>e for vehicles subject to this ruling

### National Historic Preservation Act

The National Historic Preservation Act (NHPA), as amended (16 USC Sections 470–470w), is the fundamental law concerning the protection of cultural resources on federal land, or that may be affected by an undertaking that requires federal financial assistance, or a federal permit, license, or approval. Under the NHPA, its amendments, and its implementing regulations, federal agencies are required to responsibly manage federally owned or controlled cultural resources.



Federal agency requirements pertinent to the San Elijo Lagoon Restoration Project (SELRP) are addressed in Section 106 of the NHPA and its implementing regulations.

### *Section 106*

Section 106 of the NHPA requires federal agencies to take into consideration the potential effects of their undertakings on historic properties, and is generally applicable when an undertaking is the type of activity that has the potential to affect such properties. Federal undertakings include federal projects, permits, grants, and loans. The purpose of Section 106 is to avoid unnecessary impacts to historic properties from federal undertakings. The Section 106 review process is described in the Advisory Council on Historic Preservation regulations (36 CFR Part 800, as amended August 5, 2004) and Corps regulations at 33 CFR Part 325, Appendix C. Section 106 regulations (36 CFR Section 800.16[1]) define historic properties as archaeological sites, districts, buildings, structures, or objects that are included or eligible for inclusion in the National Register of Historic Places (NRHP) (36 CFR Section 60). Significance in American history, architecture, archaeology, engineering, and culture is defined as follows:

...districts, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association; and (a) that are associated with events that have made a significant contribution to the broad patterns of our history; or (b) that are associated with the lives of persons significant in our past; or (c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or (d) that have yielded, or may be likely to yield, information important in prehistory or history (36 CFR Section 60.4).

Typically, to be eligible for listing in the NRHP, a property must be at least 50 years old, or have reached 50 years old by the project completion date and retain a high level of integrity of those attributes that contribute to the property's qualifications for the NRHP.

Section 106 and the implementing regulations provide a systematic mechanism for taking into account the effects on NRHP-eligible resources from actions that are federally sponsored, funded, or licensed. It requires that the State Historic Preservation Officer and Native American tribes with historic ties to the area (and possibly other parties) be afforded an opportunity to comment on the undertaking. Native American consultation to meet Section 106 requirements will be conducted by the Corps.

## Noise Ordinances

Most of the jurisdictions in which the SELRP would occur have noise ordinances that establish construction noise standards that would be applicable to the SELRP. A noise ordinance typically includes limitations on the hours that construction work may be performed, maximum allowable noise levels, or both. In addition to the specific requirements, each ordinance typically includes a “General Prohibition” on noise that prohibits disturbing, excessive, or offensive noise that causes discomfort or annoyance to reasonable persons of normal sensitivity. A noise ordinance usually contains conditions and procedures for obtaining variances from construction noise limitations. Table F-1 summarizes the standards applicable at sensitive receptors. There are no applicable noise standards at materials placement sites within the California State Parks System (four of the five beach sites) nor for the offshore disposal locations (LA-5 and SO-5/SO-6).

**Table F-1**  
**Applicable Noise Ordinance Criteria**

Location	Jurisdiction	Construction Hours Prohibited	Construction Noise Limits
<b>Dredging, New Hwy 101 and NCTD Bridges</b>			
San Elijo Lagoon	Encinitas <sup>1</sup>	7:00 p.m.–7:00 a.m. weekdays, 7:00 p.m.–8:00 a.m., Saturday; Sundays; holidays	75 dBA <sub>(8)</sub> per 24-hr. period at residential properties
	Solana Beach <sup>2</sup>	7:00 p.m.–7:00 a.m. weekdays, 7:00 p.m.–8:00 a.m., Saturdays; Sundays; holidays	75 dBA <sub>(8)</sub> per 24-hr. period at residential properties
	County of San Diego <sup>3</sup>	7:00 p.m.–7:00 a.m. weekdays, 7:00 p.m.–8:00 a.m., Saturdays; Sundays; holidays	75 dBA <sub>(8)</sub> per 24-hr. period at residential properties
<b>Sand Placement Sites</b>			
Solana Beach	Solana Beach	7:00 p.m.–7:00 a.m. weekdays, 7:00–8:00 a.m., Saturdays; Sundays; holidays	75 dBA <sub>(8)</sub> per 24-hr. period at residential properties
Moonlight Beach	California Department of Parks and Recreation	None	None
Leucadia			
Cardiff			
Torrey Pines			

Sources:

<sup>1</sup> Encinitas Municipal Code Section 9.32.410, Variance procedures – Section 9.32.424.

<sup>2</sup> Solana Beach Municipal Code Section 7.34.100. Variance procedures – Section 7.34.240–400.

<sup>3</sup> County of San Diego Code Sections 36.408, 36.416, Variance procedures – Section 36.423

## Norman Y. Mineta and Special Programs Improvement Act [Public Law 108-426]

This act, established by DOT, Pipeline and Hazardous Materials Safety Administration, regulates safe movement of hazardous materials to industry and consumers by all modes of transportation, including pipelines. The regulations require pipeline owners and operators to meet specific standards and qualifications, including participating in public safety programs that “notify an

operator of proposed demolition, excavation, tunneling, or construction near or affecting a pipeline.” This includes identifying pipelines that may be affected by such activities and identifying any hazards that may affect a pipeline. In California, pipeline safety is administered by the Office of the Fire Marshal.

#### Porter-Cologne Water Quality Control Act

Under the Porter-Cologne Water Quality Control Act (California Water Code Division 7 Section 13000), the SWRCB is provided with the ultimate authority over state water quality policy. However, Porter-Cologne also established nine RWQCBs to provide oversight on water quality issues at a regional and local level. The RWQCB must prepare and periodically update water quality control plans (basin plans). Each basin plan sets forth water quality standards for surface water and groundwater, as well as actions to control nonpoint and point sources of pollution to achieve and maintain these standards. Projects that affect wetlands or waters of the state may require waste discharge requirements from the RWQCB, which may be issued in addition to a water quality certification or waiver under Section 401 of the CWA.

#### Public Utilities Code [California Public Utilities Commission General Order 131-D]

Public electric utilities are regulated by the California Public Utilities Commission (CPUC). General Order 131-D sets forth provisions that must be adhered to when public electric utilities construct any new electric power generating plant or modify an existing electric power generating plant, substation, or electric transmission, power, or distribution line. A Permit to Construct must be obtained from CPUC, except when planned electrical facilities would be under 200 kilovolts and are part of a larger project that has undergone the adequate level of CEQA review and approval.

CPUC regulates Investor-Owned Utilities, including those that offer electric, natural gas, steam, and petroleum service to consumers. CPUC regulates both electric and natural gas rates and services provided by these utilities, including in-state transportation over the utilities’ transmission and distribution pipeline systems, storage, procurement, metering, and billing.

#### Rivers and Harbors Act, Section 10

Section 10 of the Rivers and Harbors Act, administered by the Corps, requires permits for all structures (such as riprap) and activities (such as dredging) in navigable waters of the U.S.

### San Diego Coastal State Park General Plan

The San Diego Coastal State Parks General Plan was prepared in 1984 by the California State Department of Parks and Recreation. The plan outlines long-range goals for the nine State Park System units on the San Diego County Coast, including the following state beaches: Carlsbad, South Carlsbad, Leucadia, Moonlight, San Elijo, Cardiff, Torrey Pines, and Silver Strand. The plan establishes a variety of management objectives that are intended to reduce or eliminate erosion, protect natural and cultural resources, and provide direction for future development effort near these state beaches.

### San Diego County Code Chapter 6, Resource Protection Ordinance

The Resource Protection Ordinance, Chapter 6, provides definitions pertaining to natural and cultural resources, and presents measures for the protection of San Diego County sensitive lands, defined as wetlands, floodplains, steep slopes, sensitive biological habitats, and prehistoric and historic sites.

### San Diego County Vector Control Program

The San Diego County Vector Control Program (SDCVCP) is a branch within the County of San Diego – Department of Environmental Health. The SDCVCP is responsible for mosquito and vector-borne disease surveillance and control services in all 18 incorporated cities and the unincorporated areas of San Diego County. The SDCVCP has been reducing and controlling mosquitoes and other vectors since the 1930s. It is managed by County staff and is governed by the San Diego County Board of Supervisors.

### San Diego Municipal Storm Water Permit

In January of 2007, the RWQCB adopted Order R9 2007-0001, also referred to as the Municipal Storm Water Permit to the County of San Diego, the 18 incorporated cities of San Diego County, San Diego Unified Port District, and the San Diego County Regional Airport Authority. This was the third renewal of the Municipal Storm Water Permit (first issued on July 16, 1990, and then renewed in 2001 and 2007). The Municipal Storm Water Permit requires that each jurisdiction covered under the permit prepare a Jurisdictional Urban Runoff Management Plan (JURMP). Each of these JURMPs includes a component addressing municipal activities, industrial/commercial activities, construction, development planning, residential activities, and public education/outreach.

In accordance with the provisions of the Municipal Permit, the County of San Diego developed a Standard Urban Runoff Mitigation Plan (SUSMP) (County of San Diego 2011) and an SUSMP manual (County of San Diego 2008). The SUSMP and manual identify mitigation strategies required to protect storm water quality for new development and significant redevelopment within the San Diego region. The County's model SUSMP outlines a template for municipalities within the San Diego region to follow in preparing their respective SUSMPs. Development within each respective County of San Diego municipality is subject to each respective SUSMP, accordingly.

The County's SUSMP establishes a series of source control, site design, and treatment control BMPs that are to be implemented by all Priority Development Projects (PDP). Adherence with the guidance provided by the County of San Diego Low Impact Development (LID) Handbook (County of San Diego 2007) and compliance with the Stormwater Pollutant Sources/Source Control Checklist included in the County's Model SUSMP (County of San Diego 2011) or related municipal SUSMP would reduce potential storm water runoff impacts to levels of insignificance.

The City of Encinitas complied with County SUSMP requirements through the development of their Stormwater Manual, Chapter 7 of their Engineering Design Manual (City of Encinitas 2009). The Stormwater Manual was developed as a resource for project applicants and is enforceable by reference to the City of Encinitas Best Management Practices (BMP) Manual II. The Stormwater Manual is a policy document that defines the process and procedure for project applicants and should be used to choose and design LID and Integrated Management Practices features to ensure compliance with storm water standards. The BMP Manual II establishes minimum storm water standards and legal authority for water quality requirements of PDP.

#### *Hydromodification Management Plan*

Provision D.1.g of RWQCB Order R9-2007-0001 requires the San Diego Stormwater Copermittees (the cities within the San Diego region as well as the County government) to implement a Hydromodification Management Plan (HMP) "to manage increases in runoff discharge rates and durations from all PDP, where such increased rates and durations are likely to cause increased erosion of channel beds and banks, sediment pollutant generation, or other impacts to beneficial uses and stream habitat due to increased erosive force."

To address this permit condition, the Copermittees proceeded with developing an HMP that meets the intent of RWQCB Order R9-2007-0001 as a part of their SUSMP. The HMP requires PDP to implement hydrologic control measures so that post-project runoff flow rates and durations do not exceed pre-project flow rates and durations where they would result in an

increased potential for erosion or significant impacts to beneficial uses or violate the channel standard. Since the proposed project would discharge to the Pacific Ocean and/or a tidally influenced area, the proposed project would be exempt from the HMP requirements.

#### SANDAG Board Policy No. 25: Public Participation/Involvement Policy

The SANDAG Public Involvement Program is designed to inform and involve the region's residents in the decision-making process on issues such as growth, transportation, and public transit; environmental management; housing; open space; air quality; energy; fiscal management; economic development; interregional and binational collaboration; and public safety. The goal of this policy is to ensure that all people are treated fairly and are given equal opportunity to participate in the planning and decision-making process, with an emphasis on ensuring that traditionally disadvantaged groups are not left behind. This policy also ensures that plans, policies, and actions do not disproportionately affect low-income and minority communities.

#### San Diego Regional Water Quality Control Board Basin Plan

The Basin Plan for the San Diego Basin, most recently amended in 2012, sets forth water quality objectives for constituents that could have a significant impact related to the beneficial uses of water. Specifically, the Basin Plan is designed to accomplish the following:

- (1) Designate beneficial uses for surface water and groundwater,
- (2) Set the narrative and numerical water quality objectives that must be attained or maintained to protect the designated beneficial uses and conform to California's antidegradation policy,
- (3) Describe implementation programs to protect the beneficial uses of all water in the region, and
- (4) Describe surveillance and monitoring activities to evaluate the effectiveness of the Basin Plan.

Under the CWA, 303(d) listed water body segments are impaired for specific pollutants. These impairments are dependent upon the beneficial uses of the water body. When beneficial uses, as defined in the Basin Plan, of a water body are impaired by a particular pollutant, the water body would be a candidate for 303(d) listing and the establishment of a TMDL.

### San Elijo Lagoon Action Plan

The San Elijo Lagoon Action Plan (1998) identifies specific implementable actions to improve the biological productivity of San Elijo Lagoon. It also describes an endowment structure, management plan, and procedures for establishing a mechanism for providing long-term financial support for sustaining tidal flushing and implementing important creation, restoration, and enhancement projects at the lagoon.

### San Elijo Lagoon Area Enhancement Plan

The San Elijo Lagoon Enhancement Plan (1996) provides a long-range plan to preserve and provide for the habitat needs of wildlife while maximizing passive recreational and educational opportunities for the public. The plan details existing conditions and identifies enhancement planning concepts such as dredging, alternate inlet locations, transportation corridor modifications, and removal of invasive species.

### San Elijo Lagoon Ecological Reserve Vegetation Management Plan

The Vegetation Management Plan has been prepared to address risks associated with fire to lives and property in the Solana Beach neighborhoods adjacent to the project area and to protect the public's interest in the Reserve. The Vegetation Management Plan provides a comprehensive plan for locations where wildland interface exists in the Reserve and guides the removal of exotic vegetation and thinning of native vegetation in select areas to help reduce risks.

### Senate Bill 97

SB 97, signed August 2007, acknowledges that climate change is a prominent environmental issue that requires analysis under CEQA. This bill directed the California Office of Planning and Research to develop amendments to the CEQA Guidelines for addressing GHG emissions. The amendments became effective March 18, 2010.

### Senate Bill 922

SB 922 provides an exemption for Native American graves, cemeteries, archaeological site information, and sacred places in the possession of the NAHC, state, or local agencies from the California Public Records Act.

## Senate Bill 1374: Local Government Construction and Demolition (C&D) Guide

SB 1374 seeks to assist jurisdictions with diverting their C&D material, with a primary focus on CalRecycle (formerly CIWMB) developing and adopting a model C&D diversion ordinance for voluntary use by California jurisdictions.

## Senate Bill X1-2

In 2002, California established a Renewables Portfolio Standard (RPS) program, with the goal of increasing the percentage of renewable energy in retail sales of electricity. SB 1078 (2002) required investor-owned utilities to attain 20% RPS goal by 2020; SB 107 (2006) accelerated the timeframe for the goal to be achieved by 2010. On April 12, 2011, SB X1-2 was signed, requiring California electric utilities to procure 33% of their total energy supplies from certified renewable sources by December 31, 2020.

## Senate Concurrent Resolution Number 87

Resolution Number 87 provides for the identification and protection of traditional Native American resource-gathering sites on state land.

## Seismic Hazards Mapping Act of 1990

The Seismic Hazards Mapping Act (SHMA) of 1990 (PRC Sections 2690–2699.6) directs the California Geological Survey to identify and map areas prone to earthquake hazards of liquefaction, earthquake-induced landslides, and amplified ground shaking. The purpose of the SHMA is to reduce the threat to public safety and to minimize the loss of life and property by identifying and mitigating these seismic hazards. Staff geologists in the Seismic Hazard Mapping Program compile Seismic Hazard Zone Maps to designate Zones of Required Investigation for areas prone to liquefaction and earthquake-induced landslides. Cities and counties are required to use the Seismic Hazard Zone Maps in their land use planning and building permit processes.

## Shoreline Preservation Strategy

SANDAG's Shoreline Preservation Strategy (SPS) was developed in 1993 and proposes an extensive beach building and maintenance program for critical shoreline erosion areas in the region. The SPS emphasizes the importance of the shoreline to San Diego's environment and economy, and emphasizes the need to protect critical shoreline erosion areas, including the project study area, through a menu of activities, including beach building as the primary shoreline management tactic. Sand sources include opportunistic use of projects being



implemented within the region. Information from the SPS established a baseline guideline for the level of comprehensive nourishment needed for the San Diego region considered in the Coastal Regional Sediment Management Plan.

### State Implementation Plan

In San Diego County, the San Diego Air Pollution Control District (SDAPCD) is the agency responsible for protecting the public health and welfare through the administration of federal and state air quality laws and policies. SDAPCD is responsible for monitoring air pollution, preparing the San Diego County portion of the SIP, and publicizing rules and regulations. The SIP includes strategies and tactics to be used to attain and maintain acceptable air quality in the County; this list of strategies is called the Regional Air Quality Strategy. The rules and regulations include procedures and requirements to control the emission of pollutants and prevent significant adverse impacts.

In response to the federal nonattainment designation for the 8-hour ozone standard, SDAPCD prepared, and ARB approved and submitted, the *Eight-Hour Ozone Attainment Plan for San Diego County* to EPA in May 2007. The plan identifies control measures and associated emission reductions necessary to demonstrate attainment of the 8-hour ozone NAAQS. The SIP provides plans for attaining and maintaining the 8-hour NAAQS for ozone and demonstrates how the San Diego Air Basin (SDAB) would continue to maintain compliance with federal carbon monoxide (CO) standards. SDAB achieved the NAAQS for CO in 1993 and EPA approved a 10-year maintenance plan in 1998. The current version of the maintenance plan is the *2004 Revision to the California State Implementation Plan for Carbon Monoxide Updated Maintenance Plan for Ten Federal Planning Areas*.

SDAPCD does not have quantitative emissions limits for construction activities, nor for long-term emissions that may result from increased vehicle use. The Rules and Regulations include procedures and requirements to control emissions of pollutants and to prevent adverse impacts.

### Surface Mining and Reclamation Act of 1975

The Surface Mining and Reclamation Act (SMARA) (PRC Sections 2710–2796) provides a comprehensive surface mining and reclamation policy with the regulation of surface mining operations to ensure that adverse environmental impacts are minimized and mined lands are reclaimed to a usable condition. SMARA also encourages the production, conservation, and protection of the state’s mineral resources. PRC Section 2207 provides annual reporting requirements for all mines in the state, under which the State Mining and Geology Board is also granted authority and obligations.

## U.S. Geological Survey Landslide Hazard Program

The USGS created the Landslide Hazard Program (LHP) in fulfillment of the requirements of Public Law 106-113. The primary objective of the LHP is to reduce long-term losses from landslide hazards by improving the understanding of the causes of ground failure and suggesting mitigation strategies. The federal government takes the lead role in funding and conducting this research, whereas the reduction of losses due to geologic hazards is primarily a state and local responsibility. In the San Diego region, the Unified Disaster Council is the governing body of the Unified San Diego County Emergency Services Organization.

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